IN THE COURT OF APPEALS OF IOWA

No. 0-563 / 09-1915
Filed October 6, 2010

FARM BUREAU MUTUAL INSURANCE COMPANY,
Plaintiff-Appellant,

vs.

MCANDREWS LIVESTOCK COMPANY, INC., and JOHN MCANDREWS,
Defendants-Appellees.

Appeal from the Iowa District Court for Dubuque County, Lawrence H. Fautsch, Judge.

Farm Bureau Mutual Insurance Company appeals the district court's decision that John McAndrews retained an insurable interest in the property at issue after he transferred the deed to the property to Arlen Andersen. **AFFIRMED.**

James Pugh, West Des Moines, and David Riley, Waterloo, for appellant.

Brian Kane, Dubuque, for appellees.

Considered by Sackett, C.J., and Potterfield and Tabor, JJ.

TABOR, J.

John McAndrews could not obtain financing to complete construction of his hog buying station, so he transferred the property by warranty deed to livestock trader Arlen Andersen in return for Andersen's agreement to use his good credit to borrow an additional $600,000 needed for the project. Two weeks after the transfer, the unfinished building collapsed under the weight of ice and snow. This case presents us with the question whether McAndrews's insurer, Farm Bureau Mutual Insurance Company (Farm Bureau), is responsible for his claimed loss of more than $500,000 under the terms of his builder's risk policy. The policy provided that coverage terminated when the property was accepted by the purchaser or McAndrews's interest in the property ceased. Because we agree with the district court that neither of these contingencies occurred, we affirm.

I. Background Facts and Proceedings.

McAndrews worked as a livestock buyer for more than four decades. In 2002, he purchased eleven acres of land bordering Highway 20 in Dubuque County where he intended to build a hog distribution center. He paid $121,000 for the real estate and spent $955,037.18 over about five years to survey and grade the site, construct the 180-by-360-foot building, and install livestock scales. McAndrews reached an agreement with the Dubuque County Board of Adjustments that he would have the project completed by September 2008. By 2007, McAndrews still needed to install concrete floors and complete turning lanes from the highway, which he estimated would add another $600,000 to the overall cost.

To secure financing for the remainder of the project, McAndrews worked with an equity company from Tennessee in the summer of 2007. After months of documentation and appraisals, the finance broker determined he "could not get it done" for McAndrews, but said "he had done some financing with [Arlen] Andersen and knew his credit score, and . . . if [Andersen] had it in his name, he could get it done for him." McAndrews had known Andersen for more than twelve years and trusted him based on their prior business dealings. On November 27, 2007, McAndrews conveyed the real estate by warranty deed to Andersen "[f]or the consideration of one ($1.00) Dollar(s) and other valuable consideration." A transfer tax stamp of $98.40 was affixed to the deed.[1]

McAndrews testified that he did not intend to terminate his interest in the property at that time. McAndrews—who was accustomed to doing business with Andersen "just on handshakes"—did not enter a written or verbal agreement outlining how the property would be returned after Andersen obtained the financing. McAndrews testified: "I figured we'd do a split on the business." On December 11, 2007—before Andersen had a chance to secure the $600,000 loan—the empty building collapsed, apparently due to an accumulation of ice and snow.

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[1] Farm Bureau asserts that the stamp indicates $62,000 in consideration paid under Iowa Code section 428A.1. McAndrews responds that the stamp reflects the liens attached to the property at the time of the transfer.

McAndrews purchased insurance for his building project from Farm Bureau. On March 10, 2008, McAndrews filed a sworn statement in proof of loss with the insurer in the amount of $502,425.26. On May 9, 2008, Farm Bureau filed a petition seeking declaratory judgment “that there is no coverage” under the policy issued to McAndrews because he no longer had an insurable interest at the time of the building collapse.

Farm Bureau’s “Builders Risk Coverage Form” provided that insurance coverage would end when one of the following first occurs:

a. This policy expires or is cancelled;
b. The property is accepted by the purchaser;
c. Your interest in the property ceases;
d. You abandon the construction with no intention to complete it;
e. Unless we specify otherwise in writing:
    (1) 90 days after construction is complete; or
    (2) 60 days after any building described in the Declaration is:
        (a) Occupied in whole or in part; or
        (b) Put to its intended use.

Farm Bureau took the position that when Andersen accepted the property as purchaser, even for nominal consideration, McAndrews’s interest in the property ceased. McAndrews denied giving up his interest in the property even after conveying the warranty deed to Andersen. The district court held a trial on the matter on November 9, 2009. Farm Bureau presented exhibits to the court, but called no live witnesses. McAndrews was the only person to testify in the matter.

In an order filed November 19, 2009, the district court concluded that Andersen could not be considered a “purchaser” under the terms of the policy because "no consideration was paid for the conveyance." The court also determined that McAndrews still had an interest in the property on December 11, 2007, "such that he suffered a loss with the destruction of the hog facility by collapse." Farm Bureau now appeals.

II. Standard of Review and Burden of Proof.

The proper standard of review is in dispute. Declaratory judgments tried in equity are reviewed de novo, while those tried at law are reviewed for legal error. Iowa R. App. P. 6.907; *see Am. Family Mut. Ins. Co. v. Petersen*, 679 N.W.2d 571, 575 (Iowa 2004) (citations omitted). "Whether a declaratory judgment action is considered legal or equitable in nature is 'determined by the pleadings, the relief sought and the nature of each case.'" *Gray v. Osborn*, 739 N.W.2d 855, 860 (Iowa 2007). Farm Bureau filed a "petition at law," but urges us to engage in de novo review because it sought an equitable remedy: declaratory judgment determining the rights of the parties. McAndrews contends the district court tried the action at law by ruling on some evidentiary objections, considering a post-trial motion, and issuing an order rather than a decree. We side with McAndrews, finding our review is limited to the correction of legal error. Because the construction and interpretation of an insurance contract is a matter of law, we are bound by the district court's well-supported findings of fact, but not by its legal conclusions. *Petersen*, 679 N.W.2d at 575.

Farm Bureau, as the party petitioning for declaratory judgment, bears the burden of proving that McAndrews was not covered under the termination clause of the builder's risk policy. *See General Cas. Co. v. Hines*, 261 Iowa 738, 742, 156 N.W.2d 118, 121 (1968).

III. Did the builder's risk coverage cease when McAndrews deeded title to Andersen for the purpose of obtaining a loan to complete construction?

We start from the familiar premise that an insurance policy is a written contract and we accord its terms a reasonable construction. *Youngwirth v. State Farm Mut. Auto Ins. Co.*, 258 Iowa 974, 978, 140 N.W.2d 881, 883 (1966). An insurance policy drafted by the insurer "must be liberally construed in favor of the insured, and if any relevant provision is ambiguous it is to be weighed in favor of the latter." *Id*. In addition, when construing an insurance policy, the intent of the parties controls. *Nationwide Agri-Business Ins. Co. v. Goodwin*, 782 N.W.2d 465, 470 (Iowa 2010). We determine the parties' intent by what the policy itself says. *See id.*

Farm Bureau issued the builder's risk policy in question to protect McAndrews's property during construction. Such policies generally extend coverage until the property is occupied or abandoned. *See, e.g.*, *Hendricks v. Great Plains Supply Co.*, 609 N.W.2d 486, 492 (Iowa 2000) (terminating builder's risk insurance upon the occupation of the house because occupation signified the building's completion); *Dodge v. Grain Shippers' Mut. Fire Ins. Ass'n*, 176 Iowa 316, 333-34, 157 N.W. 955, 961 (1916) (providing that, pursuant to the policy, builder's insurance would cease upon abandonment of the building).

This kind of insurance coverage serves a specific purpose:

> [A] builder's risk policy typically insures both building materials and the partially constructed building until the time that the building is completed and the owner accepts the building or the contractor's insurable interest in the project ceases. At that point, builder's risk coverage no longer applies, and the owner purchases traditional . . . insurance coverage for the building.

Liberty Ins. Underwriters, Inc. v. Weitz Co., 158 P.3d 209, 216 (Ariz. Ct. App. 2007). Builder's risk policies often contain specific termination clauses in an attempt to coordinate the respective risks between the builder and the eventual owner. *See* Vol. 7, Lee R. Russ & Thomas F. Segalia, *Couch on Insurance* § 102:29 at 85 (3d ed. 2005) ("[C]overage may be explicitly provided until the purchaser accepts the building and the interest of the builder ceases, in which case resort must be had to the precise facts existing at the time of the loss, with reference to the legal effect of various facts under property law.").

The policy at issue lists five events, any one of which would result in cessation of coverage: (1) expiration or cancellation of the policy, (2) acceptance of the property by the purchaser, (3) cessation of the builder's interest in the property, (4) abandonment of construction with no intention to finish, and (5) completion of the construction and occupation of the building. Farm Bureau argues McAndrews's transfer of the warranty deed to Andersen triggered the second and third grounds for termination of coverage.

A. Did Andersen accept the property as the purchaser within the terms of the builder's risk policy?

The district court held: "Andersen cannot be considered a 'purchaser' in that no consideration was paid for the conveyance." On appeal, Farm Bureau contends that monetary consideration is not required to effectuate a purchase.

The insurer asserts that Andersen's promise to use his good credit to borrow $600,000 to finish the project constituted consideration and makes Andersen a "purchaser." McAndrews counters that Andersen was not a "purchaser" as contemplated by the terms of the insurance policy because all Andersen did was hold legal title to facilitate financing.

Because the second event described in the termination clause—"The property is accepted by the purchaser"—is susceptible to more than one interpretation, it is ambiguous and we must construe the meaning of the terms. *See First Newton Nat'l Bank v. Gen. Cas. Co.,* 426 N.W.2d 618, 628 (Iowa 1988). Our construction of ambiguous terminology is done in the light most favorable to the insured, because insurance policies are contracts of adhesion. *Id.*

We do not believe that construction of this clause should focus on the isolated inquiry whether Andersen may be considered "the purchaser" of the property. The more enlightening question is whether the unfinished hog buying station was "accepted" by Andersen when he agreed to seek financing for the remainder of the project and received title to the property. In the prototypical builder's risk policy termination case, acceptance by the purchaser would follow completion of construction and be evidenced by either written or oral assertions, or demonstrated by the purchaser's actions in using, possessing, or occupying the completed building, or in obtaining traditional property insurance. *See, e.g.*, *Fireman's Fund Ins. Co. v. Millers' Mut. Ins. Ass'n*, 451 F.2d 1140, 1141 (10th

Cir. 1971); *McGuire v. Wilson,* 372 So. 2d 1297, 1301 (Ala. 1979); *Thiel Indus., Inc. v. W. Fire Ins. Co.*, 289 N.W.2d 786, 789 (N.D. 1980).

Even if he could be deemed a purchaser, Andersen did not "accept" a finished construction project so as to terminate McAndrews's need for builder's risk coverage. Instead, he accepted the warranty deed from McAndrews so that a lender would be willing to finance completion of the construction. Farm Bureau did not present any evidence to show that Andersen "accepted" the hog buying station by written or oral statements or by using, occupying, or insuring the unfinished facility. The second event described in the cessation clause did not contemplate the kind of conveyance that occurred in this case. Construing ambiguous terminology against the insurer, we conclude the builder's risk coverage did not cease based upon Andersen's receipt of the warranty deed to the unfinished building project.

B. Did McAndrews's interest in the unfinished hog buying station cease when he transferred the warranty deed to Andersen?

The district court determined that McAndrews retained an "insurable interest" in the eleven-acre property he was developing even after transferring the warranty deed to Andersen. The court relied on *Merrett v. Farmers' Ins. Co.*, 42 Iowa 11, 13 (1875), for its benchmark definition:

> What is an insurable interest? An interest, to be insurable, does not depend upon title or ownership of the property; it may be a special or limited interest, disconnected from title, lien or possession. If the holder of an interest in property will suffer loss by its destruction he may indemnify himself therefrom by a contract of insurance.

Finding it significant that “no one else took possession of the property” after the title transfer, the district court decided McAndrews held an interest in the property at the time of the December 11, 2007 collapse because he suffered a loss with the destruction of the hog facility. *See McWilliams v. Farm & City Mut. Ins. Ass’n*, 248 Iowa 233, 235, 80 N.W.2d 320, 322 (1957) (“This ‘insurable interest’ means that whenever a person will suffer a loss by a destruction of the property he has an insurable interest therein.”).

Farm Bureau disputes the extent of McAndrews’s interest in the property after he transferred the warranty deed to Andersen, characterizing it as “a mere expectancy of future rights in the property.” The insurer argues that when McAndrews transferred the property without reaching any “collateral agreements” with Andersen, “all of McAndrews’s previously held interests ceased.” In support of this argument, Farm Bureau points to the petition in equity McAndrews filed against Andersen in September 2009 seeking return of the deed to the property. McAndrews testified that he filed the equity action after negotiations with Andersen over an operating agreement floundered in April 2009. When asked why Andersen refused to give the property back, McAndrews explained: “Because he wants to be part of the deal and the deal hasn’t finished yet.”

McAndrews insists he did not transfer his insurable interest in the property when he transferred legal title to Andersen. In his testimony, McAndrews explained that it was common for him to do livestock business with Andersen without a host of formalities. McAndrews knew Andersen for more than twelve years and trusted him. McAndrews transferred the property to Andersen with a plan to “get it financed” and expected the two of them would “be a unit in some way” when the business was completed. McAndrews testified that if no financing was obtained and no partnership arrangement was worked out, he anticipated that Andersen would return the deed to the property.

Neither side called Andersen to testify. Farm Bureau bears the burden to show McAndrews relinquished his interest in the property thereby terminating the builder’s risk coverage. At trial, Farm Bureau offered five exhibits: a photograph of the facility; the deed dated November 27, 2007; McAndrews’s sworn statement; McAndrews’s petition in equity against Andersen; and the insurance policy. Unquestionably, this evidence demonstrated McAndrews gave up legal title to the property. But the true inquiry is whether Farm Bureau carried its burden to show McAndrews’s insurable “interest” in the property ceased when he transferred title to the eleven-acre tract.

The district court followed well-established law in determining that McAndrews’s transfer of title was disconnected from the question whether he possessed an insurable interest in the property. Our supreme court long ago explained: “The term *interest*, as used in application to the right to insure, does not necessarily imply *property*.” *Warren v. Davenport Fire Ins. Co.*, 31 Iowa 464, 467 (1871) (holding that owner of stock in corporation has an insurable interest in corporate property). The *Warren* court went on:

> An “insurable interest” is *sui generis*, and peculiar in its texture and operation. It sometimes exists where there is not any present

> property, or *jus in re*, or *jus ad rem*.[2] Yet such a connection must be established between the subject-matter insured, and the party in whose behalf the insurance has been effected, as may be sufficient for the purpose of deducing the existence of a loss to him from the occurrence of the injury to it.

Id. at 468; *see also Parker v. Iowa Mut. Tornado Ins. Ass'n*, 220 Iowa 262, 269, 260 N.W. 844, 848 (1935) (recognizing mortgagor's right of redemption as "insurable interest").

Commentators agree that a person has an insurable interest in property "whenever he would profit by or gain some advantage from its continued existence or suffer some loss or disadvantage by its destruction." Couch on Insurance § 41:11. That commentary continues:

> If the insured would sustain a loss by the destruction of the insured property, it is immaterial whether he or she has any title in, lien upon, or possession of, the property itself. Any right which may be enforced against the property, and which is so connected with it that its injury or destruction will cause loss, is an insurable interest. Thus, any interest in property, legal or equitable, conditional, contingent, or absolute is insurable.

Id.

The purpose of the doctrine of insurable interest is to prohibit an insured from

> simply wagering as to whether the property will be damaged, which would be the case, for example, if an insured, believing that it was likely that a hurricane would hit during the year, purchased insurance to coverage a house, or houses, with which he or she had little or no connection. Under those circumstances, allowing the insured the potential to obtain insurance benefits in the event there turned out to be hurricane damage would, in effect, create a wagering contract, not a true insurance contract.

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[2] "Jus in re" is a Latin term meaning a right in property valid against anyone in the world. "Jus ad rem" is a Latin term for an inchoate or incomplete right to property. Black's Law Dictionary 863–64 (7th ed. 1999).

2 Allan Windt, *Insurance Claims and Disputes*, at 96 § 6:49 (5th ed. Supp. 2010).

A denial of coverage on the ground that the policy holder lacked an insurable interest—such as Farm Bureau urges here—should "be successful only if paying the claim would run afoul of the foregoing limited purpose of the insurable interest doctrine." *Id*. Commentator Windt cautions against using the insurable interest doctrine as "a technical requirement that the insured has to satisfy." Windt notes:

> The insurance company was paid a premium to provide benefits in the event of damage to the property, and the insurer should ordinarily be bound by the terms of the insurance contract**.** It is only if it would be against public policy that the contract should not be enforced as written, and as discussed above, it would not be against public policy to enforce an insurance contract as written, based upon the doctrine of insurable interest, unless the circumstances supported the conclusion that the insured had made a wagering contract under the guise of insurance.
>
> Accordingly, an insured can have the requisite insurable interest even if the insured does not have an ownership interest in the property; it is enough that the insured could suffer a loss by the destruction of the property.

Id.

Other jurisdictions uniformly find an insurable interest where the insured will suffer a direct pecuniary loss by destruction of the property. "The unrippled current of authority is to the effect that title to, or lien upon property, is not essential to an insurable interest." *See Crossman v. American Ins. Co. of Newark, N.J.,* 164 N.W. 428, 430 (Mich. 1917) (assignee of option to purchase realty with building thereon, assigned by occupant thereof to pay indebtedness, had insurable interest in property); *accord Bernhardt v. Boeuf & Berger Mut. Ins. Co*., 319 S.W.2d 672 (Mo. Ct. App. 1959) (Where mother and son intended to live together in house being built by son with mother's permission on land, owned by her, which she had promised to convey to son when house was completed, son had an "insurable interest" in house while it was in process of construction, regardless of whether promise to convey land to son was enforceable or sufficient to create in son an equitable estate in the land.); *Smith v. Eagle Star Ins. Co.,* 370 S.W.2d 448, 450 (Tex. 1963) ("neither the title nor a beneficial interest is requisite to the existence" of an insurable interest; "it is sufficient that the insured is so situated with reference to the property that he would be liable to loss should it be injured or destroyed by the peril against which it was insured"; here insured who had possession of real property and dwelling house for twenty years had insurable interest though property was owned by the state).

We are convinced that McAndrews retained a connection to the insured property from which we can deduce he suffered a loss following the building collapse. Several objective factors drive our analysis. First, McAndrews invested more than $950,000 in developing the real estate and building the hog buying station, in addition to the $121,000 he paid for the land in 2002. Given this substantial investment, it is obvious that McAndrews suffered a direct pecuniary loss by the destruction of the building. This is not a case where McAndrews purchased the insurance policy as a wager on some future disaster befalling a construction project with which he had little involvement. The livestock operation was "his heart's desire for many years" and he sunk more than one million dollars into making it a reality. McAndrew's transfer of the title to his business associate so that additional financing could be secured was another step toward completion. Enforcing the builder’s risk policy would not violate the public policy against wagering contracts.

Second, Andersen paid little or nothing for the property. The nominal consideration recited in the warranty deed indicates McAndrews did not intend to relinquish his insurable interest in the property.

Third, it was common practice for McAndrews to conduct sizeable livestock deals with Andersen “just on handshakes” because of the nature of the industry and the level of trust they developed after more than a decade of doing business. According to McAndrews’s uncontroverted testimony, he transferred the deed in exchange for Andersen’s promise he would use his credit in an attempt to obtain the remaining $600,000 in financing. Against this backdrop, the lack of details about what would happen after the financing was settled does not undermine McAndrews’s reasonable expectation that he would receive the property back when an operating agreement was hammered out. We reject Farm Bureau’s argument that McAndrews’s right to return of the property was “speculative and contingent.” McAndrews’s testimony established the return was certain, it was the conditions of the return that were still being negotiated.

Fourth, both McAndrews and Andersen have acted consistently with the notion that McAndrews retained an interest in the property. McAndrews visited the site of the collapse, initiated a clean-up of the wreckage, and submitted a claim to his insurance company for damages. Andersen did not have his own insurance on the building, did not take possession of the property, and did nothing to limit McAndrews’s access to the site after receiving transfer of the title.

They also continued to negotiate an operating agreement even after the building collapse.

The object of the builder's risk policy was to indemnify McAndrews against loss in the event of destruction before the hog buying station was completed. When the building collapsed McAndrews lost his previous investment in the construction, as well as the opportunity to complete the project with financing obtained through his agreement with Andersen. Had Andersen obtained the loan, McAndrews would have been indebted to Andersen for the use of his credit. The transfer of the warranty deed is consistent with the creation of a security for that contemplated debt. *Cf. Warren*, 31 Iowa at 469 (discussing how mortgagee can insure mortgaged property despite the fact mortgage is "mere security" for a debt).

The district court's decision that McAndrews retained an insurable interest in the property is supported by the approach taken in analogous cases discussing equitable mortgages. When doubt exists regarding the parties' intended transaction, we construe an absolute conveyance of property as a security interest in the form of an equitable mortgage, rather than an outright conveyance of title. *Steckelberg v. Randolph*, 404 N.W.2d 144, 148 (Iowa 1987) ("We have always recognized that '[a] conveyance absolute on its face may, by proper evidence, be shown to be but a mortgage.'") (citation omitted). That is, where it is unclear whether the parties intended to transfer an absolute deed or to merely create a security interest, "we resolve the doubt in favor of an equitable mortgage." *Id.* at 149. In determining whether a conveyance is absolute or the creation of an equitable mortgage, we look to the following factors: (1) the parties' intent; (2) the consideration remitted for the property; and (3) retention of possession. *See id.*; *see also Koch v. Wasson*, 161 N.W.2d 173, 177 (Iowa 1968).

To ascertain the parties' intent, we "look behind the form of the instruments to the real relationship between the parties." *Koch*, 161 N.W.2d at 177. Here, although the form of the instrument appears to convey McAndrews's entire interest, the relationship between the parties and the circumstances surrounding the transaction create sufficient doubt that the parties intended an absolute conveyance for purposes of the builder's risk policy. *See Morton Farmers' Mut. Ins. Ass'n v. Farquhar*, 200 Iowa 1206, 1210, 206 N.W. 123, 125 (1925) (noting insured's execution of deed did not "necessarily extinguish the insurable interest of the insured in the property"). "Whether a deed shall operate as an absolute transfer of title and possession, or shall operate as a continuing security for a debt, is a question always dependent upon the antecedent transaction pursuant to which it was executed." *Id.* As discussed, McAndrews conveyed the deed intending to procure financing for his project, expected Andersen to return the property after the parties reached an agreement, shared a decade-long business relationship with Andersen, and previously conducted large deals with Andersen on just a handshake. These facts were unrefuted by Farm Bureau.

Moreover, "[i]nadequacy of consideration is a strong circumstance tending to show the transaction was intended to be a mortgage." *Koch*, 161 N.W.2d at

178. Here, McAndrews transferred the warranty deed to Andersen in exchange for one dollar, which suggests the parties intended to create a security interest rather than to effectuate an absolute conveyance. In addition, "[r]etention of possession by the grantor is considered a circumstance consistent with the claim of creditor-debtor relationship and inconsistent with the theory of absolute conveyance." *Id.* In this case, the property was under construction so neither party was in possession in the traditional sense. Nevertheless, McAndrews acted consistently with the notion of ownership even after he transferred the deed as detailed above.

Resolving doubts in favor of an equitable mortgage, the conveyance from McAndrews to Andersen is consistent with a security interest, not an absolute conveyance. Importantly, a mortgagor retains an interest in the property and does not transfer all right, title, and interest by virtue of a mortgage. *See Johnson v. Bd. of Supervisors*, 237 Iowa 1103, 1107, 24 N.W.2d 449, 452 (1946) (explaining that although a mortgagee held legal title to the plaintiff's property for the purpose of securing his loan to the plaintiffs, the plaintiff-mortgagors, nevertheless, retained equitable title); *Everist v. Carter*, 202 Iowa 498, 500, 210 N.W. 559, 561 (1926) (stating that mortgagor retained equitable title when he transferred deeds to property intending to create a mortgage); *Johnson v. Bd. of Supervisors of Jefferson County*, 237 Iowa 1103, 1107, 24 N.W.2d 449, 452 (1946) (explaining that although a mortgagee held legal title to the plaintiff's property for the purpose of securing his loan to the plaintiffs, the plaintiff-mortgagors, nevertheless, retained equitable title). Since McAndrews, as mortgagor, would retain an interest in the property, and since "[a]ny interest . . . recognized by a court of law or equity is an insurable interest," this analysis further bolsters our conclusion that McAndrews retained an insurable interest in this case. *Parker*, 220 Iowa at 269, 260 N.W. at 848; *Warren*, 31 Iowa at 467.

We restrict our analysis in this case to the fact-laden question whether Farm Bureau proved that McAndrews did not suffer a loss from the destruction of the building or that he failed to retain an equitable interest in the property under the terms of his insurance policy. We do not question that after transfer and recording of the warranty deed Andersen was owner of the property in fee simple for legal title purposes.

We hold that McAndrews did not cease having an "interest" in the property after he transferred legal title to Andersen. To hold otherwise would be a windfall for Farm Bureau at the expense of its insured. *See generally Conrad Bros. v. John Deere Ins. Co.*, 640 N.W.2d 231, 239 (Iowa 2001) (reasoning that insurance company would be unjustly enriched by avoiding payment of proceeds to assignee of casualty policy). Therefore, we agree with the district court that Farm Bureau cannot deny coverage under the builder's risk policy.

AFFIRMED.

Potterfield, J., concurs; Sackett, C.J., dissents.

SACKETT, C.J. (dissenting)

I respectfully dissent. There is no evidence to support a finding that John McAndrews had a present defined insurable interest or any right to a future interest on December 11, 2007, in property in Dubuque County, Iowa, that had been insured by Farm Bureau for a snow load loss that occurred on that day. More importantly, the only finding the evidence supports is that coverage under the policy McAndrews purchased from Farm Bureau ended because on the date of the loss (1) the property had been accepted by the purchaser (Anderson) and that (b) there was a cessation of the builder's (McAndrews) interest in the property.

McAndrews purchased an insurance policy from Farm Bureau insuring structures on the property for snow load losses. At the time of the purchase he had an insurable interest. The policy he purchased provided that coverage under the policy would end when one of five specified events occurred. Those relevant to the issue here are: "B. The property is accepted by the purchaser;" and "C. Your interest in the property ceases."

On November 27, 2007, prior to the snow load loss McAndrews, a single person, conveyed the property by warranty deed with no reservations to Arlen Andersen. The deed was recorded with the Dubuque County Recorder on November 29, 2007, and shows that revenue tax of $98.40 had been paid.[3] There are no further written documents addressing the transfer.

[3] This shows consideration. The fact that the consideration may have been an acceptance of the obligations on the property does not mean there was not consideration.

The district court relied on McAndrews's testimony it was his intent in conveying the property that Andersen would use the property as collateral for a loan to build a hog facility and the two would split the profits. Therefore, the court found that neither condition was met. The court specifically found Andersen was not a purchaser because there was no consideration for the conveyance and McAndrews had an interest in the property such that he suffered a loss.

The district court did not describe McAndrews's alleged interest. Farm Bureau filed a post-trial motion pursuant to Iowa Rule of Civil Procedure 1.904(2), asking the district court to clarify why the transaction was not supported by consideration and to define the nature of McAndrews's retained interest. The motion was denied.

Taking the evidence in the light most favorable to McAndrews, the most it shows is that he claims an undefined possible future interest in possible future profits. McAndrews makes no claim to an interest in the property; rather, his is a speculative claim to future sale proceeds depending on a future sale rendering a profit.[4] A mere expectancy that property will be conveyed to a person who does not have actual or constructive possessory title in property does not give that person an insurable interest in the property. *See Farmers Butter & Dairy Co-op. v. Farm Bureau Mut. Ins. Co.*, 196 N.W.2d 533, 536-38 (Iowa 1972). McAndrews does not even claim an expectancy that the property will be conveyed to him. His only claim is to a portion of the profit that may result from a sale. He retained no interest in the real estate.

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[4] Farm Bureau insured the property, not future profits.

Furthermore, McAndrews is no longer an insured under the policy terms, as Andersen purchased and accepted the property, and McAndrews's insurable interest in the property ceased at the time of Andersen's purchase.

I recognize that because of the adhesive nature of insurance policies, their provisions are construed in the light most favorable to the insured. *Ferguson v. Allied Mut.*, 512 N.W.2d 296, 299 (Iowa 1994). Exclusions from coverage are construed strictly. *LeMars Mut. Ins. Co. v. Joffer*, 574 N.W.2d 303, 307 (Iowa 1998). Even with this direction in mind, unlike the majority I do not find "accepted by the purchaser" to be an ambiguous term and I believe the uncontroverted evidence shows the property was "accepted by the purchaser." In searching for the ordinary meaning of undefined terms in a policy, we commonly refer to dictionaries. *A.Y. McDonald Indus., Inc. v. Ins. Co. of N. Am.*, 475 N.W.2d 607, 619 (Iowa 1991). "Accept" means to "receive willingly." Merriam-Webster's Collegiate Dictionary 7 (11th ed. 2003). In accepting and recording the deed, Andersen accepted the property. McAndrews's current interest in the property ceased at the time of this event. Generally, in the absence of fraud, accident, or mistake, which is not claimed here, a deed cannot be varied or contradicted by parol evidence. *See Deupree v. Kibler*, 192 N.W. 842, 843 (1923); *Prenosil v. Pelton*, 186 Iowa 1235, 1243, 173 N.W. 235, 237-38 (1919); *Beeson v. Green*, 103 Iowa 406, 408, 72 N.W. 555, 555 (1897). Where a warranty deed is an absolute conveyance and is recorded, courts should not consider testimony that the parties did not intend the deed to be absolute. *See Klein v. Klein*, 239 Iowa 40, 48-50, 29 N.W.2d 163, 167 (1948). The warranty deed given to Andersen conveys fee simple title and puts no restrictions or conditions on Andersen's use or ownership. There is no ambiguity in the deed; consequently it is clear on its face and cannot be contradicted by parol evidence and the only conclusion that can be drawn is that Andersen accepted the property. *See In re Estate of Myers*, 440 N.W.2d 617, 619 (Iowa Ct. App. 1989).

Andersen met the definition of a purchaser. Black's Law Dictionary defines "purchase" as "1. The act or an instance of buying. 2. The acquisition of real property by one's own or another's act . . . rather than by descent or inheritance." Black's Law Dictionary 1270 (8th ed. 2004). It then defines "purchaser" as, "1. One who obtains property for money or other valuable consideration; a buyer . . . and 2. One who acquires real property by means other than descent, gift, or inheritance." *Id.* at 1270-71. Webster's dictionary defines purchase as "something obtained . . . for a price in money or its equivalent," and "to acquire (real estate) by means other than descent." Merriam-Webster's Collegiate Dictionary 1010. These definitions indicate that a purchase occurred when Andersen took the deed. I believe the only conclusion that can be reached here is that Andersen was a purchaser who accepted the property.

Furthermore, at the time of the loss McAndrews had no interest in the property, having conveyed all his interests away and at most only claiming an interest in profits from the sale. While one may argue the result may be unfair to McAndrews, the policy must be interpreted as written.